

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

CRS RECOVERY INC. and DALE MAYBERRY,

Plaintiffs,

v.

JOHN LAXTON, NORTHBAY REAL ESTATE,
INC., et al.,

Defendants.

No. 06-07093 CW

ORDER GRANTING
TRUSTEE'S MOTION TO
SET ASIDE DEFAULT
AND GRANTING
PLAINTIFFS' MOTION
TO SCHEDULE CASE
MANAGEMENT
CONFERENCE
(Docket Nos. 240 and
251)

Linda Green, the Chapter 7 Trustee of the Estate of Defendant Northbay Real Estate, Inc. moves to set aside the Clerk's Entry of Default against Northbay. Plaintiffs CRS Recovery, Inc. and Dale Mayberry oppose the motion. Plaintiffs also file an administrative motion to schedule a case management conference. The matters were submitted on the papers. Having considered all of the papers filed by the parties, the Court GRANTS the Trustee's motion to set aside the Clerk's Entry of Default and grants Plaintiffs' motion to schedule a case management conference.

BACKGROUND

On April 6, 2010, the Ninth Circuit issued its decision in CRS Recovery v. Laxton, 600 F.3d 1138 (9th Cir. 2010), in which it reversed this Court's grant of summary judgment to Plaintiffs on the issue of ownership of the domain name RL.com, finding that there were disputed issues of material fact about whether the domain name had been transferred by fraud or theft and whether Mayberry had abandoned the domain name before Defendant John Laxton acquired it. On July 13, 2010, this Court held a case management conference after remand. At the case management conference, Laxton advised the Court that counsel who represented him and Northbay was withdrawing and he was in the process of securing new counsel. The Court cautioned Laxton that he could not represent Northbay, because a corporation had to be represented by an attorney. The Court established a trial date of December 13, 2010, but did not set a date by which new counsel was required to appear. On July 21, 2010, the Court granted the parties' stipulation to allow the withdrawal of Plaintiffs' attorney.

After the case management conference, Laxton attempted to locate new counsel without success and, in a letter dated September 15, 2010, he advised the Court of his difficulty in obtaining counsel and requested a continuance of the trial date. On September 20, 2010, the Court denied the request for a continuance and directed Laxton to confer with Plaintiffs' counsel to schedule his deposition for a date no later than October 15, 2010.

On September 29, 2010, Laxton advised Plaintiffs' counsel that he intended to file for personal bankruptcy and, on October 13,

1 2010, Laxton filed a Chapter 13 bankruptcy petition. Laxton states
2 that, at that time, he understood that his bankruptcy filing would
3 stay this litigation, including his need to appear at any
4 deposition.

5 On November 5, 2010, Plaintiffs filed a request to enter
6 default against Northbay on the ground that neither Laxton nor
7 anyone else on Northbay's behalf had given any indication that
8 Northbay expected to retain counsel. In a footnote in the request,
9 Plaintiffs noted that Laxton had not sat for the completion of his
10 deposition as representative of Northbay as the Court had ordered.
11 On November 10, 2010, the Clerk entered a default against Northbay.
12 On November 15, 2010, the Court entered an order staying all
13 proceedings against Laxton pursuant to the bankruptcy stay and
14 ordered Plaintiffs to file a motion for default judgment against
15 Northbay by December 15, 2010. Also on November 15, 2010, Northbay
16 filed a Chapter 7 bankruptcy petition. On December 15, 2010,
17 Plaintiffs filed a motion for default judgment against Northbay and
18 served it on Northbay by email to Laxton. On January 6, 2011, this
19 case was administratively closed because both Defendants had filed
20 for bankruptcy protection.

21 Subsequently, Plaintiffs filed, in Northbay's and Laxton's
22 bankruptcy cases, motions to lift the automatic stay so that this
23 case could be litigated to final resolution in this Court.
24 Following the filing of those motions, the Trustee for Northbay,
25 with the bankruptcy court's approval, retained special counsel for
26 Northbay, and the Trustees for both bankruptcy estates consented to
27 Plaintiffs' application to lift the automatic stay.

1 Now the Northbay Trustee moves, under Rule 55(c) of the
2 Federal Rules of Civil Procedure, to set aside the default entered
3 against Northbay.

4 LEGAL STANDARD

5 Federal Rule of Civil Procedure 55(c) provides that a court
6 "may set aside an entry of default for good cause." The district
7 court has discretion to determine whether a party demonstrates
8 "good cause." Madsen v. Bumb, 419 F.2d 4, 6 (9th Cir. 1969). The
9 court's discretion is particularly broad where a party seeks to set
10 aside an entry of default rather than a default judgment. Mendoza
11 v. Wight Vineyard Mgmt., 783 F.2d 941, 945 (9th Cir. 1986).

12 In evaluating whether a party has demonstrated good cause, a
13 district court may consider the following factors: (1) whether the
14 defendant's culpable conduct led to the default; (2) whether the
15 defendant has a meritorious defense; and (3) whether setting aside
16 the default would prejudice the plaintiff. TCI Group Life Ins. v.
17 Knoebber, 244 F.3d 691, 696 (9th Cir. 2001). Default judgments are
18 "ordinarily disfavored" because "[c]ases should be decided upon
19 their merits whenever reasonably possible." Eitel v. McCool, 782
20 F.2d 1470, 1472 (9th Cir. 1986). Thus, whenever "timely relief is
21 sought . . . and the movant has a meritorious defense," a court
22 must resolve any doubt in favor of setting aside the default.
23 Mendoza, 783 F.2d at 945-46. The party seeking to vacate the entry
24 of default bears the burden of demonstrating that these factors
25 favor doing so. TCI Group Life, 244 F.3d at 696.

DISCUSSION

I. Culpable Behavior

A defendant's conduct is culpable "where there is no explanation of the default inconsistent with a devious, deliberate, willful or bad faith failure to respond." District Council 16 Northern California Health and Welfare Trust Fund v. Alvarado, 2010 WL 2765522, *2 (N.D. Cal.) (citing TCI, 244 F.3d at 697-98). Plaintiffs contend that Northbay's conduct violated the Court's orders, was willful and deliberate and, therefore, was culpable. The Trustee argues that this is not the typical case for default because Northbay answered Plaintiffs' complaint and the only ground for default is the fact that Northbay was unrepresented by counsel for a few months prior to filing for bankruptcy. The Trustee contends that the temporary lack of counsel did not violate any order of the Court because the Court never set a date by which Northbay had to retain counsel and Northbay never appeared before this Court without counsel. The Trustee also argues that Laxton was diligent in attempting to locate new counsel for Northbay, was unable to do so for financial reasons, but kept Plaintiffs and the Court apprised of his efforts, thus evidencing good faith.

The Court concludes that, under these circumstances, there is no showing of a devious, deliberate or bad faith failure to obtain counsel. Therefore, this factor weighs in favor of setting aside the entry of default.

II. Prejudice

The prejudice required to defeat a motion to set aside entry of default must result in greater harm than delaying the resolution

1 of the case; it must result in tangible harm such as loss of
2 evidence, increased difficulty in discovery or an opportunity for
3 fraud or collusion. District Council, 2010 WL 2765522 at *3; TCI,
4 244 F.3d at 701.

5 Plaintiffs argue that they have been prejudiced by the delay
6 in going to trial and by the fact that Laxton has sold one of his
7 assets, which might have been used to pay a judgment in their
8 favor. The delay here has been a few months and is, therefore,
9 insufficient to cause prejudice. Laxton's sale of an asset also is
10 insufficient to establish prejudice because there is no Court order
11 prohibiting such a sale and an award of damages in favor of
12 Plaintiffs at this point is speculative. Therefore, this factor
13 weighs in favor of setting aside the default.

14 III. Meritorious Defense

15 Pursuant to the Ninth Circuit's opinion, there are two
16 disputed issues of material fact. The first is whether Mayberry
17 lost the domain name RL.com through fraud and not theft. See CRS,
18 600 F.3d at 1145-46. This is relevant because, under California
19 law, if it was lost through theft, the name would belong to
20 Plaintiffs; if the name was lost by fraud, the name would belong to
21 Defendants. See id. at 1145 ("the law distinguishes between a
22 purchaser whose vendor obtained title by fraud and a purchaser
23 whose vendor obtained title by theft, because an involuntary
24 transfer results in a void title, whereas a voluntary transfer,
25 even if fraudulent, renders the title merely voidable."). The
26 second issue is whether Mayberry's actions constituted abandonment
27 of the right to possess the domain name RL.com, in which case the
28

1 name would belong to Defendants. See id. at 1146-47.

2 Plaintiffs argue that they do not have to prove that
3 Defendants have no defense, but just that they have no meritorious
4 defense. However, given the Ninth Circuit's opinion, there are
5 material disputes of fact regarding two meritorious defenses--that
6 the domain name was lost through fraud and that Mayberry had
7 abandoned the domain name. Therefore, this factor weighs in favor
8 of setting aside the default.

9 Because all factors weigh in the Trustee's favor and because
10 of the strong policy against default judgments, the Court concludes
11 that the entry of default should be set aside and this case should
12 proceed to judgment on its merits.

13 IV. Sanctions

14 It is appropriate to condition the setting aside of a default
15 upon the payment of a sanction. Nilsson, Robbins, Dalgarn,
16 Berliner, Carson & Wurst v. Louisiana Hydrolec, 854 F.2d 1538,
17 1546-47 (9th Cir. 1988). The sanction relieves any prejudice
18 suffered by the non-defaulting party. Id. at 1546.

19 Plaintiffs argue that, if the Trustee's motion is granted, the
20 Northbay Estate should be sanctioned by conditioning the setting
21 aside of the default on payment of \$35,607 for the attorneys' fees
22 and costs Plaintiffs incurred in filing the motions for entry of
23 default and for default judgment. For the reasons discussed above,
24 the Court concludes that an award of sanctions is not warranted.

25 CONCLUSION

26 For the foregoing reasons, the Trustee's motion to set aside
27 the entry of default against Northbay (docket no. 51) is granted

1 and Plaintiffs' administrative motion to schedule a case management
2 conference (docket no. 65) is granted. A case management
3 conference is set for Tuesday, December 6, 2011 at 2 p.m. Case
4 management statements are due one week before that.

5
6 IT IS SO ORDERED.

7
8 Dated: 10/21/2011


CLAUDIA WILKEN

United States District Judge